

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
HBC License Corporation) File No. EB-02-SD-157
)
Licensee of Station KHOT-FM) and
Paradise Valley, Arizona)
) File No. EB-02-SD-158
Licensee of Station KHOV-FM)
Wickenburg, Arizona) NAL/Acct. No.: 200332940001
) FRN: 000-494-6141
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 29, 2002

By the District Director, San Diego Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that HBC License Corporation ("HBC"), licensee of FM Broadcast stations KHOT-FM, Paradise Valley, Arizona and KHOV-FM, Wickenburg, Arizona, has apparently willfully and repeatedly violated Sections 11.35(a), 11.35(c) and 11.61 of the Commission's Rules by failing to maintain operational Emergency Alert System ("EAS") encoder and decoder equipment and by failing to conduct and log required EAS tests.¹ We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that HBC is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. On May 6, 2002, an Agent from the FCC's San Diego Office inspected stations KHOT-FM and KHOV-FM at the shared main studio facility located at 4745 N. 7th St., #140, Phoenix, Arizona. The inspection revealed that KHOT-FM and KHOV-FM share common EAS equipment, which at the time of inspection, appeared to be operational. The Agent noted that HBC maintained a single, continuous

¹ 47 C.F.R. §§ 11.35(a), 11.35(c) and 11.61.

² 47 U.S.C. § 503(b).

printout of the log for the EAS equipment for both KHOT-FM and KHOV-FM. This printout indicated that no EAS tests (sent or received) were conducted during the period from September 14, 2001 through April 9, 2002. Further, the printout indicated that the EAS unit was not operational from September 17, 2001 through April 8, 2002. There was no written explanation of why the EAS tests were omitted or any indication that the stations' chief operator or other personnel attempted to identify the source of any problem with the EAS equipment.

3. On May 28, 2002, an official Notice of Violation was issued to HBC for failing to maintain operational EAS equipment, for failing to receive and transmit tests, and for failing to conduct weekly checks of the station's records by the designated chief operator from September 14, 2001 though April 9, 2002.³

4. On June 27, 2002, the FCC's San Diego office received a reply letter dated June 26, 2002, from HBC. The letter included a statement from HBC's designated chief operator dated June 24, 2002. In that statement the chief operator acknowledged the violations and delineated steps taken to prevent future EAS rule violations.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly, and "repeated" means the commission or omission of the act more than once or for more than one day.⁵

6. The Rules provide that every FM Broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁶ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general

³ 47 C.F.R. §§ 11.35, 11.61(a)(1) & 73.1870(c)(3).

⁴ 47 U.S.C. § 503(b).

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(1), which also applies to Section 503(b), provides: "[t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ 47 C.F.R. §§ 11.11 & 11.41.

public.⁷ State and local area EAS plans identify sources responsible for coordinating carriage of common emergency messages from agencies such as the National Weather Service or local emergency management officials.⁸

7. The Rules require FM Broadcast stations to ensure that EAS equipment, such as encoders, decoders, attention signal generators and receivers, is installed so that the monitoring and transmitting functions are available during the times whenever the station is in operation.⁹ The Rules also require FM Broadcast stations to: (a) receive monthly EAS tests from designated EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.¹⁰

8. As required by Section 11.61 of the Rules, monthly EAS tests must be retransmitted within 60 minutes of receipt, weekly EAS tests be conducted at least once a week at random times and all EAS tests received and transmitted must be logged in the station's records. Section 73.1820(a) of the Rules provides, in part, that entries must be made in the station log either manually by a person designated by the licensee who is in actual charge of the transmitting apparatus or by automatic devices.¹¹ This rule section further provides that all stations must enter each test and activation of the EAS pursuant to the requirements of Part 11 of the Rules and the EAS Operating Handbook.¹² Stations may keep EAS data in a special EAS log maintained at a convenient location; however, this log is considered a part of the station log.

9. The shared EAS log for KHOT-FM and KHOV-FM indicated that the EAS equipment was not operational for over 6 months, and that personnel for both stations failed to conduct or log a single transmitted or received test (monthly or weekly) from any source from September 14, 2001 through April 9, 2002. The log also revealed that the designated chief operator did not conduct the weekly review of the station's log.

⁷ 47 C.F.R. § 11.1 & 11.21.

⁸ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

⁹ 47 C.F.R. § 11.35.

¹⁰ 47 C.F.R. § 11.61(a)(1)(v). At the time of the violations, the Rules required monthly EAS tests to be retransmitted within 15 minutes of receipt of the required test message. Effective May 16, 2002, the Rules were modified to require monthly EAS tests to be retransmitted within 60 minutes of receipt of the required monthly test message. *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, EB Docket No. 01-66, Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002).

¹¹ 47 C.F.R. § 73.1820(a).

¹² 47 C.F.R. Part 11.

10. Based on the evidence, we find that HBC willfully and repeatedly violated Sections 11.35 and 11.61 of the Rules by failing to maintain operational EAS equipment and failing to comply with EAS testing and logging requirements. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),¹³ and Section 1.80 of the Rules,¹⁴ for EAS equipment not installed or operational is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, an \$8,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹⁵ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, HBC is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8000) for violations of Sections 11.35(a), 11.35(c) and 11.61 of the Rules.¹⁶

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, HBC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, SW, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year

¹³ 12 FCC Rcd 17087 (1997), *recon denied*, 15 FCC Rcd 303 (1999).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35(a), 11.35(c) and 11.61.

period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.¹⁷

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (“OCBO”) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail - Return Receipt Requested, to HBC License Corporation, 3102 Oak Lawn Ave., Suite 215, Dallas, Texas 75219.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director, San Diego Office

Enc: FCC List of Small Entities

¹⁷ See 47 C.F.R. § 1.1914.

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	
<i>International Services</i>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	

Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<i>Mass Media Services</i>	
Television Services	
Low Power Television Services and Television Translator Stations	\$12 Million in Annual Receipts or Less
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	\$6 Million in Annual Receipts or Less
Multipoint Distribution Service	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
<i>Wireless and Commercial Mobile Services</i>	
Cellular Licensees	
220 MHz Radio Service – Phase I Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase II Licensees	Auction special size standard -
700 MHZ Guard Band Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals)
Private and Common Carrier Paging	Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard -
Broadband Personal Communications Services (Block F)	Small Business is \$40M or less in annual gross revenues for three previous calendar years
Narrowband Personal Communications Services	Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard -
900 MHz Specialized Mobile Radio	Small Business is \$15M or less average annual gross revenues for three preceding calendar years
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	
Fixed Microwave Services	1,500 Employees or Fewer
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer

Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	
Instructional Television Fixed Service	\$12.5 Million in Annual Receipts or Less
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	
Audio and Video Equipment Manufacturers	750 Employees or Fewer
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)

